

UNITED STATES COURT
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEB - 1 1999 JT

Michael N. Milby, Clerk of Court

JOE HAND PROMOTIONS, INC.

§

VS.

§

§

CIVIL ACTION NO. H-98-1056

§

JOSE MENDOZA HUERTA, ET. AL.

§

ALIMAN'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Kahtan Aliman, d/b/a Carnaval Nightclub (Aliman), defendant herein, filing his motion for summary judgment in the above styled and numbered cause against the plaintiff, Joe Hand Promotions, Inc., and in support thereof would show unto the court the following:

1.0 This is a suit wherein the plaintiff alleges that Aliman illegally displayed the Tyson-McNeeley boxing match on August 19, 1995 at a night club called "The Grind" and/or "Carnaval". Plaintiff claims it had the right to distribute that match and seeks damages and attorneys' against Aliman under 47 U.S.C. §605 and 47 U.S.C. §553.

2.0 Aliman is entitled to a judgment as a matter of law based on deemed admissions. This suit was originally filed on March 27, 1998. On November 16, 1998, defendant Aliman served interrogatories, request for production and request for admissions upon plaintiff Joe Hand Promotions, Inc. to be answered by the plaintiff under the Federal Rules of Civil Procedure. Attached are true copies of the requests for admissions, the enclosing letter and the United States Post Office Receipt showing counsel for plaintiff received the discovery on November 23, 1998. To this

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date there have been no objections, no requests for extensions and no responses.

3.0 Having failed to respond or object to requests for admissions, they are deemed admitted as a matter of law under FRCP 33(a). Any matter admitted under the rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. FRCP 33(b).

Deemed admissions 1 through 26 state the following:

1. Aliman was not the owner of the club located at 8320 SW Freeway, Houston, Texas 77074, on or about August 19, 1995.
2. On August 19, 1995, Samuel T. Castorani went to the nightclub located at 8320 SW Freeway, Houston, Texas.
3. The name of the club Mr. Castorani entered at 8320 SW Freeway, Houston, Texas on August 19, 1995 was "The Grind".
4. Mr. Castorani paid a ten dollar cover charge to enter the club located at 8320 SW Freeway, Houston, Texas on August 19, 1995.
5. Mr. Castorani was given a wrist band, a true and accurate copy of which is attached to these requests as exhibit A.
6. The bartender at the club located at 8320 SW Freeway, Houston, Texas on August 19, 1995 was a black male named Corem, about 28 years of age.
7. Attached as exhibit B to these requests is a true and accurate copy of Mr. Castorani's affidavit regarding his visit to the club located at 8320 SW Freeway, Houston, Texas on August 19, 1995.
8. Attached as exhibit C to these requests is a true and accurate copy of a flyer Mr. Castorani obtained from the club located at 8320 SW Freeway, Houston, Texas during his visit to that club on August 19, 1995.
9. Aliman did not have possession or control of the premises in question on August 19, 1995.
10. Aliman had sub-leased the premises to Charles Pribilski, also known as Jimmy Olson, on February 28, 1995.
11. Aliman was not on the premises of the club in question on the

night of the fight.

12. Aliman did not have any knowledge that the fight in question was to be shown on or before August 19, 1995.
13. Aliman has received no payment or benefit from the showing of the fight in question if in fact it was shown at the club in question.
14. If in fact the fight was shown at The Grind club without any payment and by illegal means, as alleged by the plaintiff, then Charles Pribilski and his partner and/or joint venturer, Chris Tellison, are responsible for same.
15. Aliman is not a proper party to this suit.
16. Joe Hand Promotions, Inc. did not have the right to distribute the Tyson-McNeeley program on August 19, 1995.
17. Kingvision Pay-Per-View Corp. LTD. had the right to distribute the Tyson-McNeeley program on August 19, 1995.
18. This party has no documents related to the substantial monies that this party expended in consideration of the agreement to publicly exhibit the Tyson-McNeeley program to various entities in the state of Texas.
19. This party has no documents showing that, with full knowledge that the Tyson-McNeeley program was not to be received and exhibited by entities unauthorized to do so, this defendant (Kahtan Aliman, individually and dba Carnaval Nightclub) and/or his agents, servants, workmen or employees unlawfully intercepted, received and/or de-scrambled said satellite signal and did exhibit the program at 8320 Southwest Freeway, Houston, Texas, willfully and for purposes of direct or indirect commercial advantage or private financial gain.
20. This party has no documents showing that, this defendant (Kahtan Aliman, individually and dba Carnaval Nightclub) and/or his agents, servants, workmen or employees used an illegal satellite receiver, intercepted plaintiff's signal and/or used an illegal cable converter box or devise to intercept plaintiff's broadcast which originated via satellite uplink and then re-transmitted via satellite or microwave signal to various cable and satellite systems.
21. This party has no documents showing that, this defendant (Kahtan Aliman, individually and dba Carnaval Nightclub) and/or his agents, servants, workmen or employees knowingly modified a device or utilized equipment, knowing or having reason to know that the device or equipment is used primarily

in the assistance of the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for any other prohibited activity.

22. This party has no documents showing that, with full knowledge that the Tyson-McNeeley program was not to be received and exhibited by entities unauthorized to do so, this defendant (Kahtan Aliman, individually and dba Carnaval Nightclub) and/or his agents, servants, workmen or employees did exhibit the program at 8320 Southwest Freeway, Houston, Texas, at the time of its transmission willfully and for purposes of direct or indirect commercial advantage or private financial gain.
23. This party has no documents showing that, this defendant (Kahtan Aliman, individually and dba Carnaval Nightclub) and/or his agents, servants, workmen or employees illegally intercepted the program in question when it was distributed and shown by cable television systems.
24. This party has documents showing the names, addresses and telephone numbers of all persons/entities who have previously settled with this party for allegedly illegally showing the Tyson-McNeeley fight of August 19, 1995, and/or which state the amount of the settlement and/or the amount of attorney's fees paid to this party's (Joe Hand Promotions) attorneys as fees for their services rendered.
25. This party has no documents showing the amount of attorney's fees this party (Joe Hand Promotions) contends Kahtan Aliman, individually and dba Carnaval Nightclub owes as attorney's fees and/or which show the factual basis for the amount claimed and/or the reasons Aliman should be held liable for those attorney's fees.
26. This party has no documents showing the investigation this party undertook prior to authorizing this lawsuit against Kahtan Aliman, individually and dba Carnaval Nightclub, and/or which show any factual basis this party had for concluding that Aliman may be liable under any of the theories of liability plead against Aliman in this litigation.

4.0 Having admitted to the above stated requests, defendant Aliman has established that he did not have control or possession of the premises where the fight was allegedly shown; he did not profit from the showing of the fight; the plaintiff did not have the right to distribute the fight; and, that Aliman is not a proper party to this suit. These facts establish that Aliman is not liable to the

plaintiff as a matter of law.

5.0 Wherefor, premisses considered, Aliman requests that his motion for summary judgment be granted and that plaintiff take nothing by virtue of filing this suit against Aliman, that the plaintiff to ordered to pay Aliman's costs and that Aliman receive any other relief, at law or in equity, to which he may show himself to be entitled.

Respectfully submitted,



CARLOS A. PENICHE
SBN 15748300
2232 Portsmouth
Houston, Texas 77098-4024
(713) 520-9966
(713) 520-7099 [FAX]

ATTORNEY FOR KAHTAN ALIMAN

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing document(s) ha(s/ve) been forwarded to the following parties and/or attorneys of record, in accordance with Federal Rules of Civil Procedure 5, on this 29th day of January, 1999.

Ms. Julie Cohen Lonstien
One Terrace Hill, P.O. Box 351
Ellenville, New York 12428

Mr. Peter M. Blute
11601 Katy Freeway, Suite 101
Houston, TX 77079



CARLOS A. PENICHE

FILE

CARLOS A. PENICHE

ATTORNEY AT LAW

BOARD CERTIFIED CIVIL TRIAL LAW
AND PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
LICENSED IN TEXAS AND VIRGINIA

2232 PORTSMOUTH
HOUSTON, TEXAS 77098-4024

TELEPHONE
(713) 520-9966
FACSIMILE
(713) 520-7099

November 16, 1998

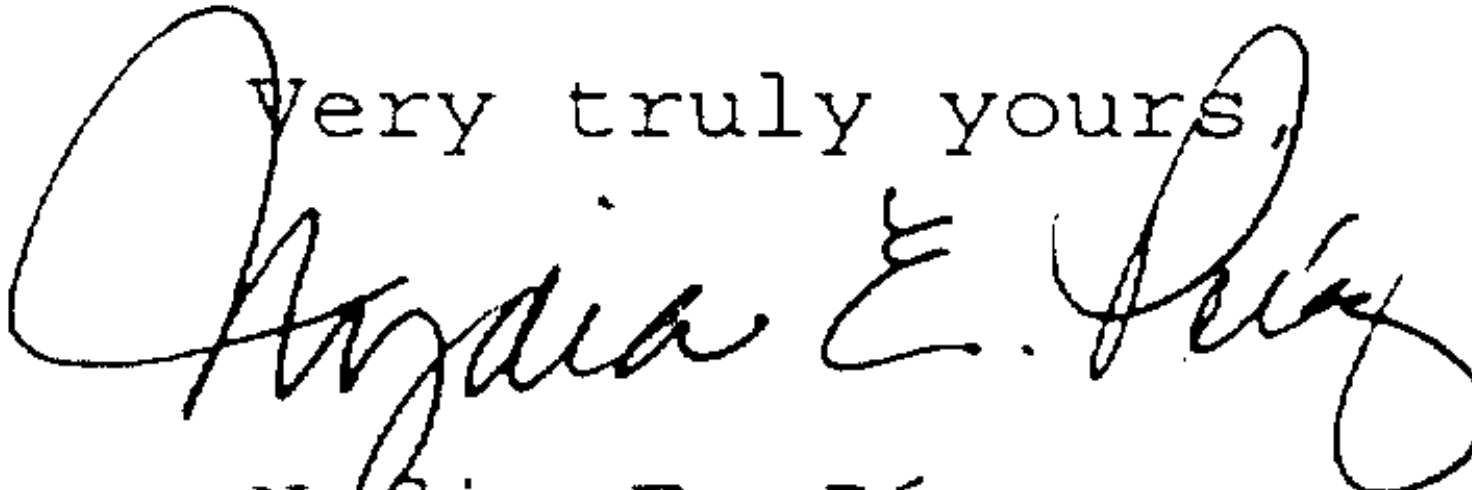
Ms. Julie Lonstein
1 Terrace Hill, Box 351
Lonstein Professional Building
Ellenville, New York 12428

VIA CM/RRR # P 110 353 594

RE: Civil Action No. H-98-1056; Joe Hand Promotions, Inc. vs. Jose
Mendoza Huerta, et. al.; In the United States District Court
for the Southern District of Texas Houston Division.


Dear Ms. Lonstein:

Enclosed please find Kahtan Aliman's interrogatories to Joe
Hand Promotions, Inc.; Kahtan Aliman's request for production to
Joe Hand Promotions, Inc.; and Kahtan Aliman's request for
admissions to Joe Hand Promotions, Inc.

Very truly yours,


Nydia E. Pérez
Legal Assistant to
Carlos A. Peniche

NEP

Enclosures (as stated) 

P 110 353 594



Receipt for Certified Mail

No Insurance Coverage Provided
See Instructions for Return Receipt

Julie Lonstein

1991

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Julie Lonstein, Esq.
1 Terrace Hill, ~~B-3~~
PO Box 351
Ellenville, NY 12428

4a. Article Number

P 110 353 594

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☒ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

23

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X

Aliman(4) Disc to TT

PS Form 3811, December 1994

102595-97-8-0179

Domestic Return Receipt

Thank you for using Return Receipt Service.

FILE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE HAND PROMOTIONS, INC. §
 §
VS. § CIVIL ACTION NO. H-98-1056
 §
JOSE MENDOZA HUERTA, ET. AL. §

KAHTAN ALIMAN'S REQUESTS FOR ADMISSION
TO JOE HAND PROMOTIONS, INC.

TO: Joe Hand Promotions, Inc., by and through its attorney of
record, Ms. Julie Cohen Lonstein, Lonstein Law Office, P.C.,
One Terrace Hill, P.O. Box 351, Ellenville, New York 12428

Pursuant to Rule 36 of the Federal Rules of Civil Procedure,
you are requested to provide a written response to undersigned
counsel of record, either admitting or denying, specifically, the
matters hereinafter listed, or setting forth in detail the reasons
why you cannot truthfully either admit or deny them, within thirty
(30) days after the service of this discovery upon you or your
attorney.

Respectfully submitted,



CARLOS A. PENICHE
SBN 15748300
2232 Portsmouth
Houston, Texas 77098-4024
(713) 520-9966
(713) 520-7099 [FAX]

ATTORNEY FOR KHATAN ALIMAN

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing document(s) ha(s/ve) been forwarded to the following parties and/or attorneys of record, in accordance with Federal Rules of Civil Procedure 5, on this 16th day of November, 1998.

Ms. Julie Cohen Lonstien
One Terrace Hill, P.O. Box 351
Ellenville, New York 12428



CARLOS A. PENICHE

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65201
DETACHED

THE GRIND

COLLET B.A. RD

1

1

100

EXHIBIT
A

I also observed the following distinguishing items inside the establishment:

Large circular bar + Large Dance Floor - Very Dark
(posters, decorations, pool tables, memorabilia, etc.)

This establishment rates
Good Fair Poor

The capacity of this establishment is approximately 400 people.

At the time of my appearance I counted the number of patrons three (3)

separate times. The head counts were 175, 175, 175.
1st Count 2nd Count 3rd Count.

I left the above establishment at 11:00 PM on AUG 19, 1995.

I also observed the following license plates in the parking lot

1) 506 YLU 2) SFB-59X 3) PRF-58S
4) RL-56R 5) 540-UBF 6) 400-VPF.

Date: Aug 21, 1995

Samuel J. Castorani
Signature of Investigator

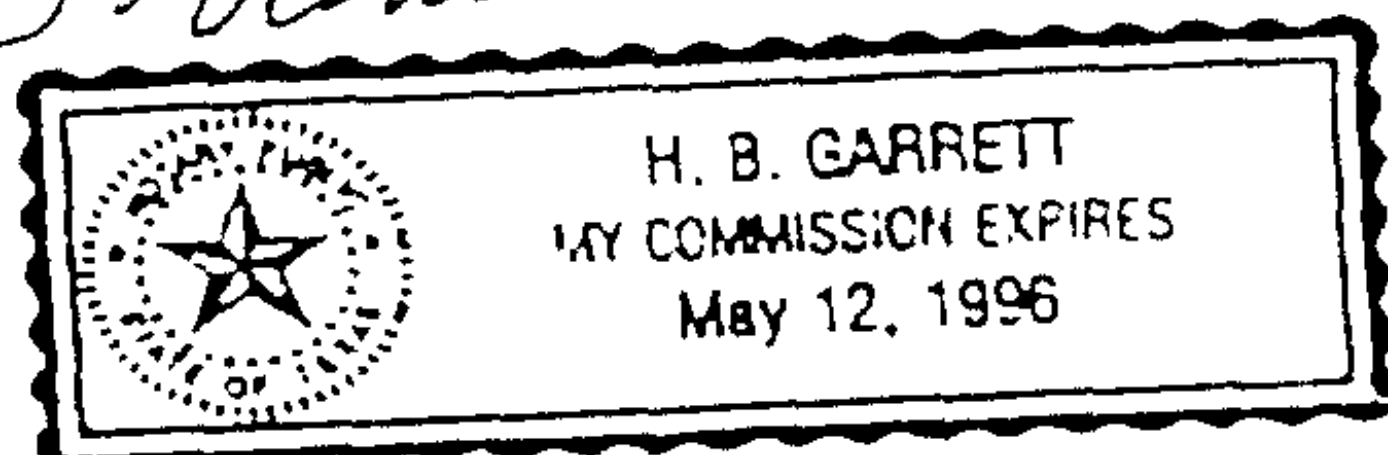
Sworn and subscribed to me

SPMUEL J. CASTORANI
Name of Investigator

this 8-21-95 day of 1995.

(notary seal)

H. B. Garrett



FERGUSON GARRETT + ASSOC
Investigative Agency

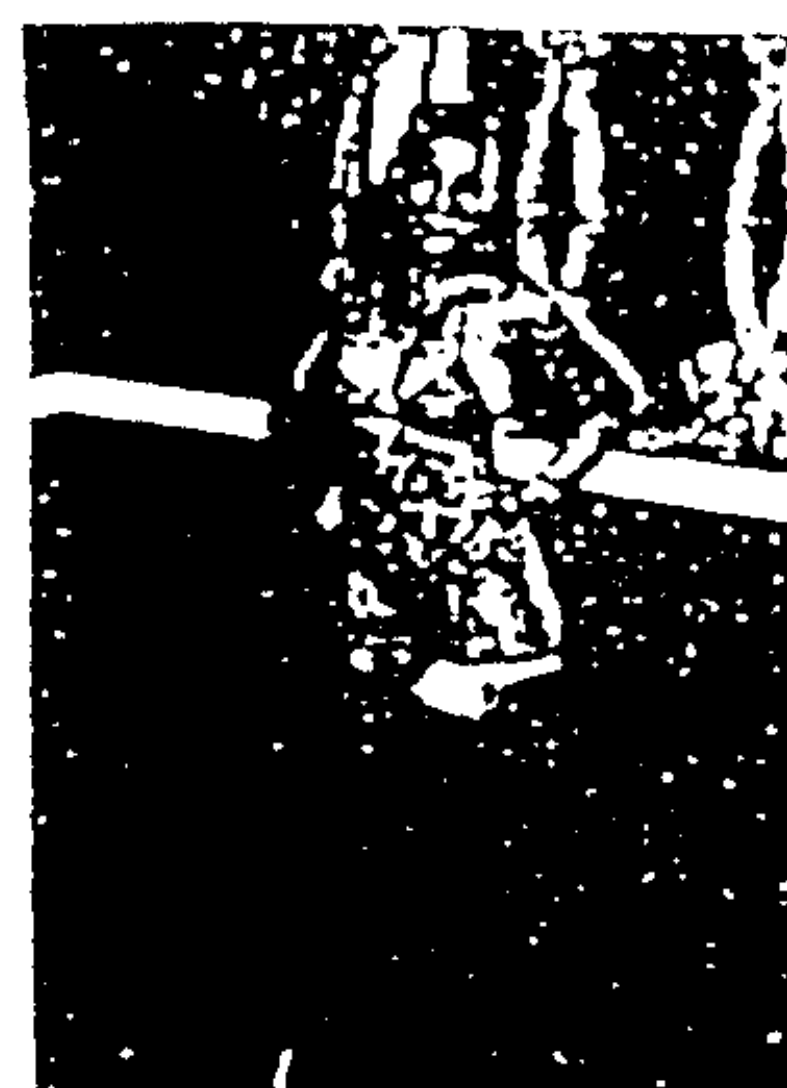
(713) 370-9061
Telephone Number of Agency



IT'S GET READY FOR THE
"Player's Ball"
Featuring over 10 Female Dancers
"That House Party"
"Player's Ball"
"That House"
"The Dream Girls"
"Take, Star and Chic Line"



ONE SHOW ONLY WEDNESDAY, AUGUST 23
"AT THE GRIND"



ONE SHOW ONLY WEDNESDAY, AUGUST 23
"AT THE GRIND"

EXHIBIT

C